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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,876	09/29/2000	Joseph Librizzi	JBP-521	3307
7590		11/03/2004	EXAMINER	
Philip S Johnson		GEORGE, KONATA M		
One Johnson & Johnson		ART UNIT		
New Brunswick, NJ 08933-7003		PAPER NUMBER		

1616

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/676,876	<b>Applicant(s)</b> LIBRIZZI ET AL.	
	<b>Examiner</b> Konata M. George	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 18-22 and 25-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-43 and 45 is/are allowed.
- 6) ☒ Claim(s) 18-22 and 25-37 is/are rejected.
- 7) ☒ Claim(s) 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Claims 18-22 and 25-45 are pending in this application.

#### ***Information Disclosure Statement***

1. The information disclosure statements (IDS) submitted on July 26, 2004 and August 18, 2004 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

#### ***Action Summary***

2. The rejection of claims 18-22 and 38-45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 7, 12 and 14 of US Application No. 10/218,774 is being maintained for the reasons stated in the previous office action.

3. The rejection of claims 18-22 and 25-37 under 35 U.S.C. 103(a) over Chen is being maintained for the reasons stated in the office action July 21, 2003.

#### ***Response to Arguments***

4. Applicant's arguments filed July 26, 2004 have been fully considered but they are not persuasive.

Applicant argues that Chen does not disclose or suggest the elements as claimed (1) a method of soothing or (2) reduction of cortisol and/or increased sIgA

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levels. With respect to the second element, the reduction of cortisol and/or increased sIgA levels, the applicant states administering a personal care composition comprising an effective amount of a sensory fragrance. The applicant also defines the sensory fragrance as chamomile, rose, orange, tuberose, etc. Column 4 through column 17 discloses numerous formulations comprising the claimed sensory fragrances. Applicant has amended the claims to recite the effective amount of the sensory fragrance as from about 0.01% to about 10% by weight. In columns 4-17, are disclosed compositions which comprise a sensory fragrance as claimed by applicant and also contains the fragrance in concentrations that are claimed by applicant. For example orange, rose, etc. in concentrations of 1%, which falls within the range as claimed by applicant.

***Allowable Subject Matter***

5. Claims 38-43 and 45 are allowed. It is not describe in the prior art a method of soothing a mammal comprising administering a personal care composition which comprises from about 0.1% to about 10% a sensory fragrance, wherein the sensory fragrance is from about 0.1% to about 8% of an essential oil portion and from about 92% to about 99.9% of an odoriferous portion, wherein the essential oil portion is comprised of a sensory fragrance from about 0.05% to about 5% chamomile and about 0.01% lavender.

***Claims Objection***

6. Claim 44 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 43. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Conclusion***

7. Claims 18-22 and 25-37 are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



SHELLEY A. DODSON  
PRIMARY EXAMINER